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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/829,643 | 04/10/2001 | Isaiah Moore JR. | IM-1 | 7659 |
| 7590 | 02/23/2006 | | | |
| Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791 | | | EXAMINER ARYANPOUR, MITRA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3711 | |

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 09/829,643 | Applicant(s) MOORE, ISIAH | |
| | Examiner Mitra Aryanpour | Art Unit 3711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 24 recites the limitation "the second user" in lines 15 and 16. There is insufficient antecedent basis for this limitation in the claim. It appears that "the second user" should be changed to "a second user".

4. Claim 24 recites the limitation "a second user" in line 18. There is insufficient antecedent basis for this limitation in the claim. It appears that "a second user" should be changed to "the second user".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Randall (3,099,450) in view of Franklin (Instructional Booklet for Major League Pitching Trainer) and DeLanzo (5,118,104).

Regarding claim 24 and 25, Randall shows a baseball batting practice apparatus and method of use, comprising: selecting a resilient (see column 1, lines 20-25) spherical ball (A) from which a segment (B) has been removed to leave the ball comprised of an exterior spherical portion (1) and a flat area (2), the removed segment being sized such that a perpendicular line from the center of the flat area to the opposite side of the remaining spherical portion is equal to or between forty-five and fifty-five percent (see column 1, lines 36-40 and lines 63-66) of the original spherical ball diameter; Randall provides instructions for illustrating (Note: the broadest reasonable interpretation of “*to illustrate*” would include *to clarify, as by use of examples or comparisons or steps*) at least one of grips, arm movement and release methods for pitching a baseball (see column 1, lines 44-50). Additionally, Randall provides the steps for enabling the first player, in the instant case the pitcher to grip, throw and release the half-ball in a manner demonstrated by the steps or instructions in order to carryout one of several chosen pitches (see column 1, lines 51-62; and column 2, lines 23-26); and further providing the steps for enabling a second player, in the instant case the batter to swing a bat having a diameter smaller than a regulation baseball bat (see column 2, lines 23-26) at the ball, wherein such steps enable the batter to attempt to identify standard pitches associated with arm movements, and improve the batter’s batting skills. The aforementioned result or step is a well known practice in Baseball. In the event applicant disagrees, DeLanzo under the Description Of The Related Art (column 1, lines 12-20) discloses this well known practice. With regards to the use of an instructional table, Randall gives a few representative examples for carrying out different pitches using the modified ball. Randall in his Patent shows these steps in text-form and not in tables, charts and graphs. However, it is well known that for marketing purposes, often times instructions are illustrated in

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the form of tables and figures to demonstrate the method of use or assembly for the end user. Franklin also shows the above feature. In view of Franklin it would have been obvious to have provided an instructional booklet having tables and figures for the training apparatus of Randall, the motivation being, so the end user can more readily carryout the instructions necessary for using the apparatus of Randall to more readily cause the projectile to sail or glide through the air. Regarding "releasing a ball in an exaggerated manner", the "exaggerated manner" is merely a human action. There is no standard criterion to determine an "exaggerated manner".

7. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record as applied to claim 25 and further in view of "The Visual Dictionary of Baseball (TVDB)".

Regarding claims 26-33, Randall does not disclose expressly each and every arm movement known in baseball and softball. Randall gives a few representative examples for gripping, throwing and releasing the half-ball. e.g. the ball can be held so that the flat side is tilted at a slight angle to the right, left, up or down, thus producing variations from normal flight, by doing so a number of varieties of pitching techniques can be developed. Randall defines the steps required for gripping, throwing and releasing the half-ball, one familiar with baseball would be able to determine the type of pitch. Additionally, Randall teaches that a whip-like sidearm pitch can be employed, so that the projectile, when released, is given a spinning motion about its own axis, with the lower flat surface generally parallel with the ground (see column 1, lines 44-62). Perhaps, since the steps (arm positioning/movements) are so well known and conventional, the patentee (Randall) may have thought that no additional comments were required for the remaining known pitches. In the event applicant disagrees that the pitches are

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old and well known, TVDB demonstrates several well-known pitches e.g. fastball, curveball, knuckleball, slider, sinkerball, etc. (see pages 26 and 27). Therefore, in view of Randall's own teaching and TVDB it would have been obvious to carryout a pitch in any well-known manner, the motivation being, to achieve the desired pitch and to make the game of Randall more interesting and educational for the end user. It should be noted that during normal use and operation of the Randall device, the method steps set forth by applicant in the claim is inherently provided.

Response to Arguments

8. Applicant's arguments filed 14 December 2005 have been fully considered but they are not persuasive. Randall '450 teaches the claimed structure and steps. The well-known concepts, which are not explicitly taught by Randal, are taught by the secondary references.

With regards to the newly added limitation "an exaggerated" manner, as indicated above, the "exaggerated manner" is merely a human action and it is unclear or perhaps even indefinite to determine what constitutes an "exaggerated manner". There are no standard criteria to determine an "exaggerated manner". In other words, a first player may feel a movement is exaggerated while the next player may not feel it is. With regards to the batter identifying the arm movement, it is well known for baseball players to give the batter an advantage when they are hitting.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

In conclusion the prior art of record read on the method steps as presented.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

16 February 2006



MITRA ARYANPOUR
PRIMARY EXAMINER